

RESOLUTION NUMBER R- 307794

DATE OF FINAL PASSAGE OCT 25 2012

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE CITY OF SAN DIEGO TO JOIN THE CALIFORNIA/FIGTREE PACE PROGRAM; AUTHORIZING THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY TO ACCEPT APPLICATIONS FROM ELIGIBLE PROPERTY OWNERS, CONDUCT CONTRACTUAL ASSESSMENT PROCEEDINGS AND LEVY CONTRACTUAL ASSESSMENTS WITHIN THE TERRITORY OF THE CITY OF SAN DIEGO; AND AUTHORIZING RELATED ACTIONS

WHEREAS, the California Enterprise Development Authority (CEDA) is a joint exercise of powers authority the members of which include numerous cities and counties in the State of California, including the City of San Diego (City); and

WHEREAS, CEDA has established the California PACE program (formerly) and now known as Figtree PACE (Figtree PACE) to allow the financing of certain renewable energy, energy efficiency and water efficiency improvements (Improvements) through the levy of contractual assessments pursuant to Chapter 29 of Division 7 of the California Streets & Highways Code (Chapter 29) and the issuance of improvement bonds (Bonds) under the Improvement Bond Act of 1915 (California Streets and Highways Code Sections 8500 and following) (the 1915 Act) upon the security of the unpaid contractual assessments; and

WHEREAS, Chapter 29 provides that assessments may be levied under its provisions only with the free and willing consent of the owner of each lot or parcel on which an assessment is levied at the time the assessment is levied; and

WHEREAS, the City desires to allow the owners of property within its jurisdiction (Participating Property Owners) to participate in Figtree PACE and to allow CEDA to conduct

assessment proceedings under Chapter 29 and to issue Bonds under the 1915 Act to finance the Improvements; and

WHEREAS, CEDA will conduct assessment proceedings under Chapter 29 and issue Bonds under the 1915 Act to finance Improvements; and

WHEREAS, there has been presented to this meeting a proposed form of Resolution of Intention to be adopted by CEDA in connection with such assessment proceedings (the ROI), a copy of which is attached hereto as Exhibit A, and the territory within which assessments may be levied for Figtree PACE shall be coterminous with the City's official boundaries of record at the time of adoption of the ROI (Proposed Boundaries); and

WHEREAS, the City will not be responsible for the conduct of any assessment proceedings; the levy or collection of assessments or any required remedial action in the case of delinquencies in such assessment payments; or the offer, issuance, sale, or administration of the Bonds or any other bonds issued in connection with Figtree PACE; and

WHEREAS, to protect the City in connection with operation of the Figtree PACE program, Figtree Energy Resource Company (Figtree), the program administrator, has agreed to defend and indemnify the City; and

WHEREAS, the Figtree PACE program shall only be available to commercial property within the Proposed Boundaries including multifamily property with five units or more and to single family residential property with no mortgage lien within the Proposed Boundaries, and the Figtree PACE program will not accept applications from residential property owners with mortgage liens within the Proposed Boundaries until such time as the issues raised by Fannie Mae and Freddie Mac regarding Property Assessed Clean Energy programs are resolved to the satisfaction of the City Attorney of the City of San Diego (City Attorney); and

WHEREAS, in order to receive financing from the Figtree PACE program, the property to be assessed and each property owner must meet certain minimum requirements as provided in the Program Report (as hereinafter defined), including that each property owner must obtain the affirmative written acknowledgement of its existing lender regarding the PACE lien of the California PACE Program and confirm that the PACE lien will not trigger a default or the exercise of remedies under the mortgage for the subject property; that the property owner must be current in the payment of all obligations secured by the subject property; that there must be no notices of default filed against the subject property; that the private loan to value ratio must comply with the terms in the Loan Application and the Program Report; that each owner of the fee simple title to the subject property must sign the Figtree PACE program documents; that the property owner must certify that it has not declared bankruptcy within the time period set forth in the Figtree PACE program documents; and the Program Report and program documents criteria may be modified from time to time by the Figtree PACE program administrator to conform to changes in law, emerging best practices or as otherwise deemed necessary or appropriate, subject to notification of the City as to any such changes; and

WHEREAS, pursuant to Government Code section 6586.5, a notice of public hearing has been published once at least five days prior to the date hereof in a newspaper of general circulation in the City and a public hearing has been duly conducted by this Council concerning the significant public benefits of Figtree PACE and the financing of the Improvements; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego as follows:

1. On the date hereof, the City Council held a public hearing and the Council hereby finds and declares that the issuance of bonds by CEDA in connection with Figtree PACE is

designed to provide significant public benefits, including without limitation, reductions in effective user charges levied by water and electricity providers within the boundaries of the City.

2. In connection with Figtree PACE, the City hereby consents to the conduct of special assessment proceedings by CEDA pursuant to Chapter 29 on property as provided in this Resolution within the Proposed Boundaries and the issuance of Bonds under the 1915 Act; provided, that:

- (1) Such proceedings are conducted pursuant to one or more Resolutions of Intention in substantially the form of the ROI;
- (2) The Participating Property Owners, who shall be the legal owners of such property, execute a contract pursuant to Chapter 29 and comply with other applicable provisions of California law in order to accomplish the valid levy of assessments; and
- (3) The City will not be responsible for the conduct of any assessment proceedings; the levy or collection of assessments or any required remedial action in the case of delinquencies in such assessment payments; or the offer, issuance, sale or administration of the Bonds or any other bonds issued in connection with Figtree PACE.
- (4) The Figtree PACE will only approve applications from Participating Property Owners within the Proposed Boundaries, and the offer, sale and issuance of Bonds will only occur after (i) the receipt by CEDA (with a copy to the City) of a final judgment from the appropriate court in connection with the pending validation action that has been filed by CEDA pursuant to Code of Civil Procedure section 860 and that states,

among other things, that the Bonds are legal obligations of CEDA, and (ii) the period for filing appeals to such final judgment has passed without any adverse action in connection therewith; and

- (5) The City shall have entered into an agreement providing for the defense and indemnification of the City and its officers and employees from any claims associated with the implementation of the Figtree PACE program, which shall be subject to the satisfaction of the City Attorney.

3. Pursuant to the requirements of Chapter 29, CEDA has prepared and will update from time to time the "Program Report and associated documents" for Figtree PACE (collectively the Program Report), and CEDA will undertake assessment proceedings and the financing of Improvements as set forth in the Program Report.

4. The appropriate officials and staff of the City are hereby authorized and directed to make applications for Figtree PACE available to property owners as provided in this Resolution who wish to finance Improvements; The following staff persons, together with any other staff persons chosen by the City from time to time, are hereby designated as the contact persons for CEDA in connection with Figtree PACE: Eric Engelman, or his designees or in his absence, designees of the Mayor.

5. The appropriate officials and staff of the City are hereby authorized and directed to execute and deliver such closing certificates, requisitions, agreements and related documents as are reasonably required by CEDA in accordance with the Program Report to implement Figtree PACE for Participating Property Owners.

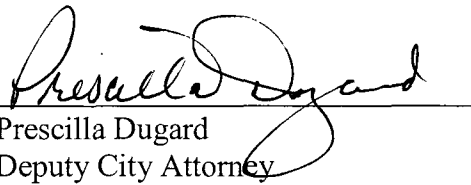
6. The City Council hereby finds that adoption of this Resolution is not a "project" under the California Environmental Quality Act, because the Resolution does not involve any

commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by Title 14, California Code of Regulations, section 15378

(b)(4).

7. This Resolution shall take effect immediately upon its adoption. The City Clerk is hereby authorized and directed to transmit a certified copy of this resolution to the Secretary of CEDA.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Prescilla Dugard
Deputy City Attorney

PMD:jdf:mr
10/12/2012
10/22/2012 COR. COPY
10/23/2012 COR. COPY 2
Or.Dept:Mayor's Office
Doc. No.: 459657

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of OCT 23 2012.

ELIZABETH S. MALAND
City Clerk

By Mary Zumbaya
Deputy City Clerk

Approved: 10.25.12
(date)

JSL
JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor